

SHORELINES HEARINGS
BOARD

FINAL FINDINGS
OF FACT

No. ~~235~~ TO ~~78-21~~

237 to 248

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL
DEVELOPMENT PERMIT ISSUED BY
CITY OF BREMERTON TO RICHARD W.
PERSON

MANETTE PENINSULA NEIGHBORHOOD
ASSOCIATION,

Appellant,

v.

CITY OF BREMERTON and RICHARD
W. PERSON,

Respondents.

SHB No. 237

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

A formal hearing was held in this matter before the Shorelines
Hearings Board, W. A. Gissberg presiding, Chris Smith, Robert F. Hintz
Robert E. Beaty and William A. Johnson on March 10 and 11, 1977 in
Bremerton, Washington.

Appellant Manette Peninsula Neighborhood Association was represented
by Philip Best; Craig Dodel appeared for respondent permittee Richard W.
Person; Assistant City Attorney Andrew Olsen represented the City of

1 Bremerton.

2 Having heard the testimony, having examined the exhibits, having heard
3 arguments and read briefs submitted by counsel, the Shorelines Hearings
4 Board makes the following

5 FINDINGS OF FACT

6 I.

7 The substantial development permit at issue in this appeal authorizes
8 the construction of twenty condominium units designed for three separate
9 buildings in a "U" formation, thirty-five on-site parking spaces,
10 conversion of an existing home into a detached sundeck, and an access
11 road into the site from Marlow and East 13th Street.

12 Two buildings will be perpendicular to the shore and two stories
13 in height; the third building will have three stories which front on
14 the water. Yards and setbacks will conform to zoning requirements and
15 no building will exceed twenty-nine feet in height.

16 II.

17 The subject parcel is approximately one acre with two hundred
18 feet of waterfront on the Manette Peninsula in East Bremerton, Kitsap
19 County, Washington. It is located on the Port Washington Narrows at
20 Marlow Avenue and East 14th Street, one quarter mile north of the Manette
21 Bridge and a few miles south of the Warren Avenue Bridge. The grade of
22 the property is a gentle slope shoreward.

23 III.

24 The underlying zoning for the site is R-2¹ which permits potential
25

26 1. Chapter III, Sec. 413, City of Bremerton Zoning Code.

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1 maximum densities of seventy units per acre; the site's environmental
2 designation under Bremerton's draft master program is Urban Residential.²

3 It would appear that under the City of Bremerton's Comprehensive
4 Plan enacted in 1966, the site is within the convergence of three zones:
5 high density residential, commercial, and a narrow strip of park
6 designation on the waterfront.

7 IV.

8 Existing on the site is a dilapidated two-story home constructed
9 on pilings extending partially seaward of high tide. An old
10 garage, driveway, and parking area are currently on the property.

11 The surrounding neighborhood is a mix of single and multi-family
12 residential and commercial uses. To the north, beyond the adjacent lot
13 which is single-family, are numerous multi-family housing units; to the
14 south is single-family residential, to the east is a commercial zone, and
15 to the west is the waterfront. Wheaton Way, a major arterial, is one-half
16 block from the site. Bremerton's downtown area is less than a mile across
17 the Manette Bridge from the property.

18 V.

19 On June 15, 1976, respondent permittee applied for a substantial
20 development permit for the described project. Section V of Ordinance
21 No. 3015, of the City of Bremerton requires the planning department to
22 "immediately send notices" of a shoreline management substantial developer
23

24 2. These areas are "to maintain existing character and be
25 consistent with residential zoning of the shoreline area in terms
26 of open space, bulk, scale, and intensity of use." p. 11, Bremerton
Shoreline.

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1 permit "containing pertinent information, to the Directors of Fisheries,
2 Game, Conservation, and Health." Although no such notice was given,
3 those state agencies have no permit authority over this particular
4 substantial development.

5 The permit was approved by the City Commissioners at a public hearing
6 held on August 18, 1976. The following permit conditions were imposed:

- 7 1. Major vegetation shall be retained where feasible,
8 particularly along the north property line and in
the southwest of the site.
- 9 2. A storm water removal system shall be approved by the
10 City Engineer and shall contain a provision for removal
of petroleum pollutants.
- 11 3. A plan for erosion control for beach protection approved
12 by the City Engineer shall be submitted prior to issuance
of building permits.
- 13 4. Exits and entrance to be approved by Police and Fire
14 Depts. and roadway to be in location as recommended by
the City Engineer via Marlow & E. 13th.

15 From the permit as conditioned, appellants timely appealed on
16 September 20, 1976.

17 VI.

18 Appellant is a neighborhood association which has received staff
19 support and encouragement from both the City of Bremerton and the
20 University of Washington's Bureau of Community Development and has been
21 active in preparing a land use proposal for the Manette Peninsula. Such
22 proposal, identified as Exhibit A-1, has never been reviewed or adopted
23 by the City Commissioners as a refinement of the City's comprehensive plan
24 Under this preliminary proposal, no high density multi-family units
25 would be permitted on the instant area of the Manette Peninsula.

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VII.

Bremerton City Ordinance No. 3306, which adopted the State Environmental Policy Act (SEPA) guidelines, was adopted on July 28, 1976 and went into effect on September 3, 1976.

A memorandum was sent from the planning department to the permittee on August 2 requesting that an environmental checklist be prepared. A checklist responsive to this request was submitted on August 4. While it apparently did not constantly remain in the City's file in this matter, the checklist was "available" to the public on request

VIII.

On August 12, 1976, a declaration of non-significance (RB-1) was issued by the city.

Question number 20 on the checklist submitted by respondent had been answered in the negative:

. . . (20) Archeological/Historical. Will the proposal result in an alteration of a significant archeological or historical site, structure, object or building? . . .

At the public hearing, a member of the appellant association questioned the effect of the development on possible Indian artifacts on the site, the Peninsula once having been used as an Indian campground. Each of the three city commissioners hearing this testimony had been a resident of East Bremerton for a number of years. The motion not to require an Environmental Impact Statement (EIS) for the project was passed unanimously.

IX.

Subsequent to the approval of the permit, the planning department

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1 ascertained that some activity to determine if Indian artifacts existed
2 on the site was being undertaken by the University of Washington.

3 An archeologist from the University did explore the site for several
4 days and determined that only an area 30x30 feet had not been previously
5 disturbed. No artifacts were discovered. On the basis of a letter of
6 assurance regarding construction received from the permittee, the state's
7 Office of Historic Preservation declined to intervene in the instant matter.

8 X.

9 The City of Bremerton satisfied all statutory and regulatory
10 provisions regarding notice throughout the processing of the subject
11 application.

12 No notice beyond that provided through compulsory publication and
13 posting was given to the appellant neighborhood association or its
14 representatives.

15 XI.

16 The thirty-five parking spaces provided on-site in two one story
17 carports are consistent with the City of Bremerton's zoning ordinance
18 which requires a minimum of one parking space per dwelling unit.

19 XII.

20 Evidence presented of view impairment demonstrated that with the
21 slope of the property, the placement of the three buildings, and
22 the height limitation of twenty-nine feet, any view blockage created
23 by the proposed project would be minimal.

24 XIII.

25 The permit condition regarding storm water removal attempts to
26 mitigate any petroleum pollutant effects from the project; however

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1 further tightening of the condition is indicated.

2 XIV.

3 Conversion of the two-story house into an open sundeck would
4 consist of removing all of the existing structure except for the first
5 floor and would create no new obstruction on the shoreline. The
6 structural integrity of the piling now supporting the house would be
7 sufficient to accommodate the proposed sundeck.

8 XV.

9 In open hearing the permittee agreed to execute covenants or agreement
10 which would allow public use of the subject property shoreward of the
11 bulkhead.

12 XVI.

13 Any Conclusion of Law hereinafter stated which may be deemed a
14 Finding of Fact is hereby adopted as such.

15 From these findings, the Shorelines Hearings Board comes
16 to these

17 CONCLUSIONS OF LAW

18 I.

19 In reviewing the validity of a substantial development permit,
20 the Shorelines Hearings Board evaluates the consistency of the proposed
21 project with the policies and provisions of the Shoreline Management
22 Act (SMA) the Department of Ecology guidelines and regulations issued
23 pursuant thereto, and the City of Bremerton draft master program "so
24 far as can be ascertained." The project as conditioned by the City
25 of Bremerton and this order is consistent with these criteria.

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1 II

2 Despite the sincere interest of the appellant in the development of
3 the Manette Peninsula, provisions of a tentative draft plan prepared
4 by a neighborhood association with no legislative authority cannot
5 be relied on by this Board to deny a project when such project is in
6 conformance with statutory standards.

7 III

8 RCW 43.21C.090 provides that the decision of a governmental agency
9 relative to the preparation or adequacy of an impact statement is to be
10 accorded "substantial weight."

11 With regard to its SEPA requirements, the City of Bremerton
12 on August 18, 1976 was controlled by SEPA and should have been guided
13 by the Council on Environmental Policy Guidelines and the city ordinance
14 adopted but not effective on that date.

15 The facts concerning the submission and availability to the public
16 of the environmental checklist, do not constitute a violation of SEPA or
17 a denial of due process.

18 The City Commissioners of Bremerton approved the permit after
19 an actual consideration of environmental factors, including an
20 allegation that the site contained Indian artifacts. They also
21 determined that this development was one which would not significantly
22 affect the quality of the environment. We concur. The development
23 will not have more than a moderate effect upon the quality of the
24 environment. The decision of the City Commissioners not to require
25 an EIS was not clearly erroneous Norway Hill v. King County Council,
26 87 Wn.2d 267 (1976).

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1 IV.

2 RCW 90.58.140(3) incorporates by reference "the same public notice
3 procedure as provided for applications for waste disposal permits for new
4 operations under RCW 90.48.170." (Emphasis added). These requirements of
5 public notice, i.e., "published twice in a newspaper of general circulation
6 within the county," were fulfilled in the instant case.

7 The City's Ordinance No. 3015 goes further than the SMA in requiring
8 that various state agencies must receive actual notice of the application.
9 While this provision of the ordinance was violated in the instant matter,
10 the fact that none of the agencies had permit authority over the project
11 renders such violation harmless.

12 The failure to give actual notice of the proposed project to the
13 appellant association or its representatives did not constitute a denial
14 of due process. Appellant could reasonably have been expected to be
15 alerted from the posting and publication of the public hearing on the
16 proposed project and in fact active representatives of the association
17 were so alerted.

18 V.

19 Despite the fact that the proposed sundeck would utilize a portion
20 of an existing structure, any part of the sundeck extending beyond the
21 bulkhead line of the property is a new use inconsistent with the policies
22 of the SMA and the Department of Ecology guidelines adopted pursuant
23 thereto, specifically WAC 173-16-060(8)(d).³ The sundeck is not a form
24

25 3. . . . (d) Residential development over water should not be
26 permitted.

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1 of pier but is a structure normally accompanying a dwelling unit and must
2 be judged by standards applicable to residential development.

3 VI.

4 While it is true that the SMA was intended to promote thoughtful
5 planning of the state's shorelines, it was equally the intent that such
6 "planning" be expressed through respective master programs.

7 The draft master program, ascertainable in this instance, designates
8 the subject property as urban residential and the project is consistent
9 with the designation. The density is not inappropriate given the
10 present densities of the neighborhood beyond the immediately adjacent
11 lots. The proximity of downtown Bremerton also properly influences an
12 acceptance of relatively high residential densities in the subject area.

13 The lowering of the potential density from that which would be
14 possible under the zoning ordinance or a broad reading of the master progr
15 environmental classification reflects a recognition on the part of the
16 developer that shoreline areas require special consideration in
17 establishing densities.

18 The Board would caution the City of Bremerton, however, that the
19 master program itself must more clearly express such a recognition
20 which would serve as an applicable standard for all applications received
21 for R-2 zone or urban residential properties.

22 VII.

23 Any Finding of Fact hereinafter stated which may be deemed a
24 Conclusion of Law is hereby adopted as such.

25 From these conclusions, the Shorelines Hearings Board comes to
26 this

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ORDER

This matter is remanded to the City of Bremerton for the issuance of a substantial development permit containing the following additional conditions:

5. No portion of the proposed sundeck is to extend beyond the line of the concrete bulkhead now existing on the site.
6. The permittee shall execute and deliver to the City of Bremerton a good and sufficient easement, approved as to form and content by the City Attorney of Bremerton, which shall ensure public use of the tidelands owned by appellant which are waterward of the bulkhead line.
7. The permittee shall be bound by the terms of the letter of assurance regarding preservation of Indian artifacts, identified as Exhibit B-1 and incorporated by reference herein.

and the revision of existing condition two, to read as follows:

At a minimum and subject to the approval of the City Engineer, petroleum waste shall be separated from storm water runoff prior to entering the Narrows.

As so conditioned, the permit is affirmed.

DATED this 6th day of April, 1977.

SHORELINES HEARINGS BOARD

W. A. Gissberg
W. A. GISSBERG, Chairman

Chris Smith
CHRIS SMITH, Member

Robert F. Hintz
ROBERT F. HINTZ, Member

Robert E. Beatty
ROBERT E. BEATTY, Member

William A. Johnson
WILLIAM A. JOHNSON, Member

17 November 1976

Shorelines Hearing Board
Arthur Brown, Chairman
Lacey, Washington 98504

Re: SHB No. 237
Manette Peninsula Neighborhood Association vs.
City of Bremerton and Richard W. Person

Dear Sirs:

This letter is to state that Richard W. Person, Linda Poylard Person, William B. Rigg, Lucy L. Rigg and Robert A. Chiarottino, owners of a 1.2 acre parcel of real estate located in Sec. 13, T 24N, R 1E, more so; that property known as the Gene Schwer residence which is bordered by the Washington Narrows on the west and Marlow Avenue on the east, do hereby agree to the following:

To assist and cooperate with those agencies in the preservation of cultural artifacts that may or may not be located on the above location.

To permit responsible governmental agencies or their appointed representatives to be present at the time of excavation for the proposed residential development takes place, to insure that cultural material, if any, be preserved.

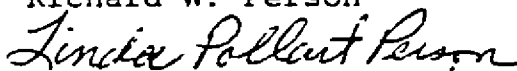
To permit responsible governmental agencies or their appointed representatives the right to remove any cultural materials or artifacts which may be located on the above described property.

To comply with all State rules and regulations that govern the protection of cultural artifacts.

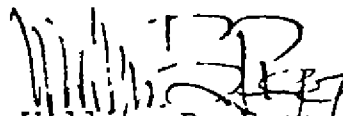
We appreciate your attention and consideration in the above matter.

Very truly yours,


Richard W. Person


Linda Poylard Person


Robert A. Chiarottino


William B. Rigg


Lucy L. Rigg